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ARIZONA CORPORATION COMMISSION

JAMES MATTHEWS  
EXECUTIVE SECRETARY

August 8, 1994

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commissions  
1919 M Street, NW - Room 222  
Washington, D.C. 20554

RE: GN DOCKET NO. 93-252

Dear Mr. Caton:

Please find enclosed for filing an original plus nine copies of the PETITION TO EXTEND STATE AUTHORITY OVER RATE AND ENTRY REGULATION OF ALL COMMERCIAL MOBILE RADIO SERVICES filed by the Arizona Corporation Commission.

Also enclosed is one additional copy of this document. Please date-stamp this copy and return it to me in the enclosed, self-addressed, postage pre-paid envelope.

Very truly yours,

ELIZABETH A. KUSHIBAB  
Attorney, Legal Division

EAK:mi  
Enclosure

PR 94-104

RECEIVED

AUG 09 1994

FCC MAIL ROOM

PR File No. 94-SP2

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AUG 09 1994

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC MAIL ROOM

In the Matter of:

Implementation of Sections 3(n)  
and 332 of the Communications Act

Regulatory Treatment of Mobile  
Services

PR 94-104  
GN Docket No. ~~93-252~~

PR File No. 94-SP2

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**PETITION TO EXTEND STATE AUTHORITY  
OVER RATE AND ENTRY REGULATION OF ALL  
COMMERCIAL MOBILE RADIO SERVICES**

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Pursuant to 47 C.F.R. § 1.429 and § 1.4(b), the Arizona Corporation Commission ("ACC" or "Arizona Corporation Commission") hereby petitions the Federal Communications Commission ("FCC" or "Commission") for authority to continue rate and entry regulation over commercial mobile service providers offering these services within the State of Arizona. This Petition is being filed in accordance with the requirements set forth in the FCC's Second Report and Order ("Order") released on March 7, 1994, in this docket.

The Arizona Corporation Commission is the duly authorized agency of the State of Arizona responsible for the regulation of all telecommunications services within the state. Acting in this capacity, the ACC has already held an evidentiary proceeding in which it considered, and rejected, deregulation of commercial

mobile radio services ("CMRS").<sup>1/</sup> It is the Arizona Corporation Commission's belief that a high degree of public interest attaches to the provision of CMRS; that cellular mobile radio services have, for a variety of reasons, become essential services to the individual subscribers. Without the safeguards afforded by state regulation, market conditions will be insufficient to protect subscribers from unjust and unreasonable rates, or from rates that are unreasonably discriminatory. This is of particular significance in rural areas of the state in which customers are dependent upon cellular service for basic telephone service, and where the cellular market is fully monopolistic. Consequently, the ACC seeks to preserve its ability to regulate the rates of the CMRS providers offering service within the state of Arizona.

**I. ARIZONA'S CURRENT REGULATORY STRUCTURE ENCOMPASSES ALL PUBLIC TELEPHONE SERVICES, INCLUDING CMRS.**

Commercial mobile radio service providers licensed by the FCC and operating in Arizona currently function under a detailed regulatory structure that has general application for all public utilities. This regulatory structure, which is described in detail below, has served Arizona consumers well, and has ensured that Arizona CMRS rates, to date, have been just and reasonable. The Arizona Corporation Commission's regulatory authority is vested in the state Constitution, and extends to all providers of intrastate

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<sup>1/</sup> The Arizona Commission considered deregulation of cellular mobile services in the administrative docket entitled, "In The Matter Of The Application Of The Mountain States Telephone And Telegraph Company For Deregulation And The Withdrawal Of Filed Tariffs Relating To The Mobile Radio Common Carrier Industry Within The State Of Arizona", resulting in Decision No. 56314, dated January 12, 1989, and provided as Appendix No. 1.

public telephone services. Ariz. Const. art. XV § 2.<sup>2/</sup> As an integral function of its broad charter, the ACC has exclusive and plenary rate making authority over public utilities operating within the state. Thus, it has "full power" to prescribe "just and reasonable rates and charges." Ariz. Const. art. XV § 3. The ACC's constitutional grant of authority includes the power to inspect and investigate the books and records of public utilities, and to act as a court of general jurisdiction to take testimony, enforce the attendance of witnesses, and require the production of evidence by subpoena. Ariz. Const. art. XV § 4.

#### **A. Statutory Scheme**

Arizona statutes prescribing procedures, limitations and remedies for public utilities also currently apply to CMRS providers.<sup>3/</sup> State law establishes the procedure for public utilities to obtain initial authority to provide service on an intrastate basis. Ariz. Rev. Stat. Ann. §§ 40-281, 40-282. The Arizona code prohibits the assessment of discriminatory or preferential rates by a public utility Ariz. Rev. Stat. Ann. § 40-203. It also prohibits the issuance of non-authorized rebates, the assessment of prices other than those stated in Commission approved tariffs. Ariz. Rev. Stat. Ann. § 40-374. Refunds shall be made

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<sup>2/</sup> A full copy of the Constitutional provisions that establish the Arizona Commission's jurisdiction and powers is provided as Appendix No. 2 to this Petition.

<sup>3/</sup> Provisions of the Arizona Revised Statutes, Title 40, that are cited in the discussion, as well as other provisions currently applicable in the regulation of CMRS providers, are provided as Appendix No. 3 to this Petition.

when the Commission determines that excessive or non-authorized charges have been assessed. Ariz. Rev. Stat. Ann. § 40-248.

State law requires that all the services, rates, classifications or contracts used or assessed by a public utility must be approved by, and kept on file with, the Arizona Corporation Commission. Ariz. Rev. Stat. Ann. § 40-365. Inherent in the ACC's ability to approve a proposed service or rate, is the ACC's ability to require changes to the proposed service or rate. State law establishes procedures to be followed if a public utility wants to change a rate, term or condition of a service it currently provides. Ariz. Rev. Stat. Ann. §§ 40-367, 40-250. Although Ariz. Rev. Stat. Ann. § 40-250 imposes additional requirements in the event that a public utility wants to increase an existing rate, the Arizona Corporation Commission differentiates between monopoly and competitive telecommunications services by allowing the companies that provide competitive services significant repricing flexibility through the establishment of maximum rates and automatic discounting mechanisms.<sup>4/</sup>

In the event that an Arizona public utility is dissatisfied with an order of the ACC pertaining to or affecting rates, state law provides an expedited and streamlined review process. Rather than go through a typical, cumbersome administrative review process, state law permits a public utility to file an appeal

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<sup>4/</sup> A sampling of representative ACC orders approving new CMRS services with the maximum rate and discounting mechanism is provided with this Petition as Appendix No. 4. There are no ACC orders authorizing subsequent repricing because formal Commission action is not required to effectuate such a price change.

directly with the state court of appeals. Ariz. Rev. Stat. Ann. § 40-254.01. The court of appeals is required to give the "direct" appeal expedited treatment, Ariz. Rev. Stat. Ann. § 40-255, and its decision is subject to review only by the state's supreme court. Ariz. Rev. Stat. Ann. § 40-254.01.

The existing regulatory structure has proved satisfactory thus far in the ACC's regulation of CMRS providers. It does not impose an onerous burden upon CMRS providers, but it does articulate standards for entry and the provision of service, for the establishment of new and modified rates, and for the ACC's consideration of customer complaints and other disputes. It has also provided proper and necessary intervention to protect customers against potential monopoly abuses. The Arizona Corporation Commission believes that the application of this state's current regulatory framework to CMRS providers has operated in the public's best interests.

**B. Rules Governing Competitive Telecommunications Companies Affecting Universal Service**

It is likely that Arizona's regulatory framework for competitive telecommunications services and companies will change within the next twelve months with the institution of streamlined and expedited requirements for qualifying companies. In furtherance of this objective, the Arizona Corporation Commission and its Staff has, for the past year, been examining alternative

regulatory frameworks for governing an increasingly competitive telecommunications industry.<sup>5/</sup>

The organization of the Commission's competition examination has taken the form of a workshop process with the establishment of three working groups comprised of users and industry members, including CMRS representatives. These groups have been examining the following issues: (1) the definition of competitive telecommunications services and companies; (2) the examination of universal service and carrier of last resort issues; and (3) the development of interconnection standards and the implementation of rules governing the competitive intrastate telecommunications industry.

With respect to the third group of issues, it is expected that the resulting standards and rules forthcoming from this process will modify existing regulation so as to facilitate ease of market entry and exit, and to allow for greater pricing flexibility than is currently available under the existing structure. It is also expected that these rules will address a number of profound policy issues, the principle one being the maintenance and preservation of universal service in the face of an increasingly competitive market.

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<sup>5/</sup> Clearly, a change in Arizona's regulatory structure is both necessary and imminent as new providers enter markets that were previously dominated by a single provider. In Phoenix, for example, four competitive access providers have initiated construction of facilities to provide interconnection service between high-volume business customers and long-distance carriers. At least one competitive access provider has announced its intention to provide local exchange service in competition with US WEST.

The purpose of this discussion is not to assure the FCC that CMRS providers will be among the beneficiaries of this regulatory reform -- that proposition goes without saying. The purpose of this discussion is to remind the FCC -- and the parties who will, no doubt, file comments in response to this Petition -- that preemption and the resulting potential for unjust and unreasonable rates can impact much more than cellular rates. The numerous industry participants that have joined in the Commission's competition examination have agreed that competition will likely erode the incumbent LEC's revenues and threaten its ability to continue to provide basic telephone service at reasonable rates. One factor contributing to the erosion of revenues is that cellular service is becoming a substitute for basic landline service.<sup>6/</sup>

In the face of this acknowledged eventuality, the industry participants have suggested that all telecommunications service providers, including cellular, should be required to help fund the maintenance of universal service objectives. Consistent with the ACC's regulatory authority, it is likely that a universal service funding mechanism will be implemented through the rate structures of intrastate providers. FCC preemption of state rate regulation over CMRS will jeopardize the Arizona Corporation Commission's ability to insure that universal service objectives are attained. If its rate and entry jurisdiction is preempted, there will be no practicable means for the ACC to require that all

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<sup>6/</sup> See, e.g. are excerpted pages from prefiled testimony submitted by US WEST in its recently concluded rate proceeding before the Arizona Commission. See Appendix No. 5 attached to this Petition.



telecommunications service providers contribute to a universal service mechanism in an equitable manner so that the public may continue to enjoy the benefits of widely available basic telephone service at reasonable and affordable rates. This result is blatantly inconsistent with the provision of the revised Communications Act that the state preemption provisions shall not exempt CMRS providers "from requirements imposed by a state commission on all providers of telecommunications services necessary to ensure the universal availability of telecommunications service at affordable rates." 47 USC § 332(c)(3)(A).<sup>7/</sup>

**II. THE ACC AFFIRMATIVELY REGULATES THE PROVISION OF CELLULAR MOBILE SERVICES INTRASTATE TO PREVENT POTENTIAL MONOPOLY ABUSES.**

Pursuant to its Constitutional mandate, the ACC has actively regulated cellular mobile service providers since September 14, 1983, when the ACC issued the first grant of intrastate authority to the wireline licensee for the Phoenix metropolitan service area. Regulation of CMRS providers occurs pursuant to the detailed regulatory structure (described above) that addresses qualifications for entry, establishment and modification of rate levels, service quality standards, and procedures to be followed before the Arizona Corporation Commission.

The ACC regulates cellular wholesale providers much as it regulates any other provider of public telephone service: (1) the

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<sup>7/</sup> Omnibus Budget Reconciliation Act of 1993, Pub.L. No. 103-66, Title VI, § 6002(b)(2). 107 Stat. 312, 392 (1993) amending Section 332(c)(3) of the Communications Act.

ACC, after an evidentiary hearing, issues Certificates of Convenience and Necessity (CC&N) that authorize cellular operators to provide intrastate CMRS and telecommunications services; (2) the ACC approves rates, terms and conditions of service on a case-by-case basis, and does not engage in rote approval, or "rubber stamping," of CMRS tariffs;<sup>8/</sup> (3) the ACC handles and resolves all customer complaints concerning CMRS service<sup>9/</sup>; (4) the ACC receives and determines petitions to issue debt and transfer assets<sup>10/</sup>; and (5) as with all other telephone utilities within the state, the ACC reviews all mergers, reorganizations and other transactions involving CMRS providers that fall under the purview of the ACC's affiliated interests rules.<sup>11/</sup>

**A. CMRS Providers Currently Subject To ACC Jurisdiction.**

Over the course of the last eleven years, the ACC has granted intrastate authority to the following CMRS providers:

<u>Company</u>	<u>Decision No./Date</u>	<u>MSA/RSA</u>
1. US WEST NewVector Group, Inc.	Dec. No. 53470 (9/14/83)	Phoenix MSA (Block B)

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<sup>8/</sup> As discussed in general terms earlier, the rates, contracts, terms and conditions that apply to a service offered by a CMRS provider must be maintained on file with the ACC. Ariz. Rev. Stat. Ann. § 40-367. A CMRS provider may not assess a rate for a service that is not on file with the ACC. Ariz. Rev. Stat. Ann. §§ 40-365, 40-374. A specific process exists for tariff changes that do not increase a rate, or that introduce a new service, or that change an existing service term or condition: the ACC must affirmatively act to approve, change or deny a proposed tariff within thirty days of filing, unless it determines that the tariff warrants further examination and deliberation. In that event, the tariff and all relevant issues will be considered in the context of an evidentiary proceeding. Ariz. Rev. Stat. Ann. § 40-250.

<sup>9/</sup> See generally, Ariz. Rev. Stat. Ann. §§ 40-246 through 40-248, 40-252.

<sup>10/</sup> See Ariz. Rev. Stat. Ann. §§ 40-285 through 40-302.

<sup>11/</sup> A copy of the Commission's Affiliated Interest Rules, Ariz. Admin. Code R14-2-801 through 806 is provided with this Petition as Appendix No. 6.

2. Metro Mobile CTS of Phoenix	Dec. No. 54231 (11/8/84)	Phoenix MSA (Block A)
3. Tucell Limited Partnership	Dec. No. 54377 (2/14/85)	Tucson MSA (Block B)
4. Tucson Cellular Telephone Company	Dec. No. 54758 11/13/85	Tucson MSA (Block A)
5. Chronicle Cellular, a div. of the Chronicle Publishing Co.	Dec. No. 57035 (7/19/90)	Gila RSA AZ-5 (Block A)
6. Century Yuma Cellular Corporation	Dec. No. 57032 (7/19/90)	Yuma RSA AZ-4 (Block A)
7. Smith Bagley, Inc.	Dec. No. 57073 (8/22/90)	Navajo RSA AZ-3 (Block A)
8. Yuma, Arizona RSA Ltd. Partnership	Dec. No. 57107 (9/21/90)	Yuma RSA AZ-4 (Block B)
9. Coconino, Arizona RSA Ltd. Partnership	Dec. No. 57105 (9/21/90)	Coconino RSA AZ-2 (Block B)
10. Southeast Az Cellular Wireless Ltd. Partnership (dissolved)	Dec. No. 57182 (12/20/90)	RSA AZ-6 (Block B)
11. Satellite Cellular Systems Partnership	Dec. No. 57181 (12/20//90)	Mohave RSA AZ-1 (Block A)
12. Arizona RSA 3 Ltd. Partnership	Dec. No. 57226 (1/16/91)	RSA AZ-3 (Block B)
13. Jaybar Communications	Dec. No. 57229 (1/18/91)	RSA AZ-6 (Block A)
14. Gila River Cellular General Partnership	Dec. No. 57270 (2/25/91)	Gila RSA AZ-5 (Block B)
15. Mohave Cellular Ltd. Partnership	Dec. No. 58122 (12/29/92)	Mohave RSA AZ-1 (Block B)
16. Metro Mobile CTS of Phoenix (acquired Chronicle Cellular)	Dec. No. 58450 (11/3/93)	Gila RSA AZ-5 (Block A)
17. AZNEV TELECOM, INC., dba Coconino AZNEV TELECOM	Dec. No. 58623 (5/2/94)	Coconino RSA AZ-2 (Block A)
18. Valley Tele-communications Co. (split of RSA-6)	Dec. No. 58670 (6-22-94)	RSA AZ-6 (East) (Block B)

19. US WEST NewVector  
Group, Inc.  
(split of RSA-6)

Dec. No. 58670  
(6-22-94)

RSA Az-6  
(West)  
(Block B)

**B. ACC Entry Regulation Has Benefitted Arizona  
Subscribers**

As a condition of granting intrastate authority to these providers, the Arizona Corporation Commission has required the provision of information that benefits the public, in particular that segment of the public that constitutes cellular subscribers. However, none of the conditions imposed by the Arizona Corporation Commission has constituted an effective barrier to entry; rather it is the FCC that dictated the number of wholesale market participants for the provision of cellular service.<sup>12/</sup>

A review of the decisions listed above would demonstrate that the ACC, in its proceedings for intrastate authorization, has routinely required applicants to comply with or provide the following: (1) delineation of the initial service territory of each cellular wholesale provider; (2) notice of any subsequent changes in geographic service area; and (3) the submission of current and future interconnection agreements. The Commission has also imposed conditions that were warranted by specific circumstances or applicants. For instance, the ACC has required the filing of

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<sup>12/</sup> It is interesting to note that while the FCC has issued licenses to two cellular providers in each market area in Arizona, not all market areas are capable of supporting the duopoly competitive structure envisioned by the FCC. In all six of Arizona's rural service areas, the only retail customer is the retail affiliate of the wholesale licensee. Even more alarming from a market dominance/market power standpoint is the fact that in some RSAs, a wholesale provider provides only roaming service leaving but a single, or monopoly provider of basic cellular service. Such a condition currently exists in Arizona RSA-1 and RSA-2.

agreements for maintenance of cellular telephone facilities, as well as technical descriptions of the type 1 and 2 interfaces. See, e.g., Decision No. 57073, (Smith Bagley, RSA AZ-3), Appendix No. 4. These provisions ensure that customers have available information about prices and service conditions pertinent in making purchasing decisions.

In certain cases, the Commission has imposed more stringent conditions under which a cellular company may provide service. For example, during the proceedings where the Arizona Corporation Commission granted intrastate authority to Tucell Partnership, a US WEST affiliate, Metro Mobile CTS of Phoenix, Inc., the nonwireline provider for the Tucson MSA raised substantive concerns regarding the potential for cross subsidization of Tucell by NewVector (another US WEST affiliate and the wireline provider in the Phoenix MSA) and by US WEST. At the conclusion of the proceedings, the Commission imposed specific conditions designed to "protect against the subsidization of NewVector/Tucell's costs by any other related public service entities."

Specifically, the Commission required Tucell to "keep its books and records in such a manner as to be amenable to periodic audit, with the contributions of all partners and any additional sources of capital clearly identifiable." Further, the Commission stated its ". . . intention and desire to have all funds clearly identifiable and easily traceable; to have implemented an accounting system which is readily auditable and which provides the basis for proper separation of investments, costs and expense by

jurisdiction and to preclude any improper intermingling of funds and any improper subsidization." See Decision No. 54377, Appendix No. 4. These provisions guard against anti-competitive behavior that results from cross-subsidization of costs among and between affiliates.

**C. ACC Rate Regulation Has Ensured That CMRS Rates Are Just and Reasonable**

The Commission has consistently exercised its jurisdiction with regard to the setting of reasonable rates and the establishment of reasonable rate structures. There are a number of instances over the years where the Commission has refused to adopt a particular rate structure proposed by a cellular company as part of its initial tariffs because the rate level or structure proposed was unreasonable, or designed to inhibit competition. For instance, in Decision No. 54122, dated July 19, 1984, the Commission approved a minimum number and time block of 100 numbers and 200 hours for NewVector in the Phoenix MSA, as proposed by the company. Approval issued on the grounds that the minimums would ensure the marketing of cellular service in economical blocks and prevent proliferation of "nickel and dime" resellers in the Phoenix, Arizona, metropolitan area. Subsequently, the ACC authorized somewhat smaller minimums of fifty numbers and 100 hours, as proposed by Tucell Partnership for the Tucson metropolitan service area. Subsequently, the ACC has insisted on significantly smaller minimums for the rural service areas. See Discussion, Section III.B, *infra*.

Additionally, it is possible for cellular providers to impose external costs on non-cellular subscribers through abuse of monopoly power. In Arizona, US WEST NewVector, Metro Mobile CTS of Phoenix, and Tucson Cellular Company, sought to introduce "calling party pays" service. This billing option would have allowed cellular usage charges to be billed to a local exchange customer who calls a cellular number, without any notification that such charges would be imposed.

The Arizona Corporation Commission ruled that "calling party pays" service was unacceptable as proposed by the cellular companies. Instead, the ACC intervened to require that "calling party pays" service be available only as a 1+ service. Without the ACC's actions, the cellular companies would have imposed significant, unjust costs on local exchange customers who would have no option to avoid such costs. See e.g., Decision No. 55275 (New Vector) and Decision No. 54892, (Metro Mobile) provided as Appendix No. 7.

### **III. MARKET CONDITIONS FOR CMRS FAIL TO PROTECT SUBSCRIBERS ADEQUATELY FROM UNJUST AND UNREASONABLE RATES.**

#### **A. The Market Falls Far Short Of Effective Competition**

According to the prior determination of the Federal Communications Commission (FCC), cellular service is provided by two competing entities (duopoly) in each service area. 47 C.F.R. § 22.902. One of the two entities is a "wireline" licensee, engaged directly or indirectly in the business of providing public landline telephone service. The other entity, the "nonwireline" licensee,

is not engaged in the business of providing public landline telephone service.

The administrative establishment of a duopoly structure for each cellular market was intended to produce competitive results. That is, the structure imposed by the FCC was designed to split the market among two wholesale providers and afford end users an option of more than one provider or source. However, simply because a market may be "contested" does not mean that there is effective competition, with all the attendant consumer safeguards that result from effective competition.

In fact, the potential for monopoly abuses remains strong. For example, because one of the two cellular licenses is made available to the local wireline provider having existing network and interconnection facilities, as well as an incumbent customer base, in most cellular market areas the wireline licensee is provided a substantial advantage over the non-wireline provider. In some markets these advantages may be too profound for competitors to attain or attract a sizeable market share. For example, only the wireline licensees in Arizona RSA-1 and RSA-2 currently provide basic cellular service to customers through their retail affiliates. The non-wireless providers in these two rural markets currently offer only roaming service. In these cases, effective competition does not currently exist.

This problem can be compounded when other circumstances exist, such as discriminatory behavior or a policy of favoritism to the affiliated retail arm. Most wholesale licensees in Arizona have



relationships with certain resellers that are particularly close, either because of a contract which establishes an affiliation, or because a reseller is actually a structural division of the wholesale entity. Without proper regulatory oversight, a cellular wholesale licensee may discriminate in favor of its affiliate through special pricing, or other terms and conditions of service.

One recent example of such discriminatory pricing involved Metro Mobile CTS of Phoenix, Inc. This company, which is a Bell Atlantic affiliate, came to the ACC seeking authority to obtain the assets and intrastate authority of Chronicle Publishing Company, the non-wireline licensee for RSA AZ-5. In the course of that proceeding, Metro Mobile sought to replace the roamer provisions in Chronicle's tariffs. The proposed replacement language established a rate preference for "roaming" service only for structural affiliates of Metro Mobile. The Commission rejected this preferential provision in Decision No. 58450, dated November 3, 1993, and required instead that Metro Mobile "enter into inter-carrier roaming agreements provided that it is willing to enter into similar agreements with non-affiliated frequency Block A carriers." Additionally, the Commission ordered Metro Mobile to "file copies of all inter-carrier roaming agreements calling for roamer rates at variance with its authorized tariff . . . for approval."

The potential for discriminatory activity may be particularly acute in states like Arizona that have many rural service areas. Generally speaking, there are not many retail providers in these

RSAs; this situation creates an incentive for the wholesale licensee to monopolize all segments of the market by controlling both wholesale and retail service. In Arizona, this is not just theory; it is a reality. In each of Arizona's six RSAs, the wholesale licensee has only one retail customer, and in each case, the retail customer is the retail affiliate of the cellular wholesale licensee.

Without effective competition -- which signifies more than a superficial showing that the market contains, or may contain, two providers -- prices for cellular services will be too high and output will be restricted by the monopolist.

**B. Barriers to Entry Will Arise In An Unregulated Market In Which The Dominant Provider Exercises Monopoly Power.**

Arizona is a very large state in terms of geographic area, ranking sixth in total area. However, eighty-five percent of its population resides in two metropolitan areas--Phoenix and Tucson. The remaining fifteen percent of the state's population is scattered over a large geographic area, with many communities located in remote areas. The Commission's oversight and intervention has been particularly critical for smaller markets in rural areas.

The introduction of cellular telephone service has provided opportunities for the most remotely located individuals to obtain basic telephone service. It has become apparent over the years that the Commission's regulatory presence has served to benefit the public by creating an environment that ensures consistent quality of service and reasonable prices throughout the state.

Additionally, the Commission's regulatory oversight has prevented market participants from employing pricing and service strategies that would preclude nonaffiliated retail providers from entering the market. Clearly, without Commission intervention, incentives exist on the part of the wholesale provider to favor its retail affiliate and erect market entry barriers for non-affiliate providers. Such pricing and service strategies are designed to establish and maintain market dominance, and hence monopoly power.

There are numerous examples of the Commission's affirmative regulatory actions relative to the oversight of this industry in establishing a level playing field for all market participants and ensuring reasonable rates and options for customers. This is demonstrated by the ACC's treatment of minimum block sizes for resellers. For example, Chronicle Publishing Company (RSA AZ-5) proposed minimum resale block sizes of 100 numbers and 200 hours for a non-metropolitan service territory, although it expected to provide service to only thirty-five retail customers during its first year of operation, and to only 520 customers by the end of the fifth year. The Commission disagreed with Chronicle's proposal as inhibiting competitive resale, and in an effort to encourage retail competition, approved minimum blocks of ten numbers and twenty hours during Chronicle's first year, and twenty-five numbers and fifty hours thereafter. Clearly, these reduced resale block sizes were more appropriate for a rural market. But, without Commission intervention and oversight, Chronicle would have engaged

in a blatantly anticompetitive pricing strategy. Decision No. 57035, Appendix No. 4.

Similarly, Smith Bagley, Inc., (RSA AZ-3) which operates in the remote Navajo, Arizona, rural service area, proposed a minimum resale block size of 100 numbers and 200 hours of use even though this carrier only anticipated ninety-four end users at the end of its first year of operation, and only 666 customers at the end of its fifth year of operation. Although Smith Bagley subsequently volunteered to reduce the block size to 50 numbers/100 hours, the ACC insisted that the size of the resale minimums should bear some relationship of the size of the retail market, and established minimums of twenty-five numbers and fifty hours for SBI's first three years of operation. Decision No. 57073, Appendix No. 4. See also Decision No. 57226, Appendix No. 4 (Ariz. RSA 3 L.P. proposal of 25 numbers/2500 minutes of usage reduced to 10 numbers/20 hours based on the size of that retail market.

**C. The Essential Nature of CMRS Service Requires That The Market Be Free From Monopoly Abuse.**

CMRS should be regarded as an essential service, that is, a replacement for land line telephone service, from two significant perspectives: (1) as a substitute for traditional, fixed, landline basic telephone service; and (2) as a connecting link to the landline network for purposes of mobile communications.

In Arizona, six of the eight cellular market areas are designated rural service areas. Providers in these RSA's serve largely rural populations, and provide roamer service to travellers. Population density in the six rural RSA's is

significantly lower than in the state's metropolitan centers. Consequently, many rural households have gone without telephone service due to the extreme and prohibitive costs involved in extending cable facilities. The introduction of cellular service in these areas has provided a substitute for basic telephone service. Therefore, this state has a compelling public interest in ensuring that cellular mobile radio services are provided at reasonable rates, and under reasonable terms and conditions. As indicated previously, and particularly for rural areas, these objectives cannot be achieved without regulation.

Additionally, changes in telecommunications technology have increased customer expectations. What was once a luxury, is today considered a necessity by many individuals. The ability to be connected to the telephone network, while in transit or from remote locations, has been made commonplace by cellular technology. Therefore, many aspects of commerce, safety and personal communications are dependent on access to the cellular network at reasonable prices and under reasonable terms and conditions. These objectives cannot be guaranteed without regulation.

#### **IV. CONCLUSION**

The FCC has established stringent criteria that the states must meet if they are to retain regulatory jurisdiction over cellular providers. However, the ACC urges the FCC to be mindful of the fact that Arizona's regulatory responsibilities are clearly articulated in the state's constitution and statutes. As demonstrated in this petition, the Arizona Corporation Commission's

regulatory oversight of cellular service has enured to the benefit of customers, has prevented the assessment of unreasonable rates, and is essential to the maintenance and preservation of universal service in Arizona. The Arizona Commission's regulatory oversight has also provided sufficient freedom for CMRS providers to compete in the market. The ACC should be allowed to maintain its oversight over CMRS, since it is clear that the market is far from fully competitive -- particularly in Arizona's rural service areas -- and since it has attained the status of an essential service throughout the state.

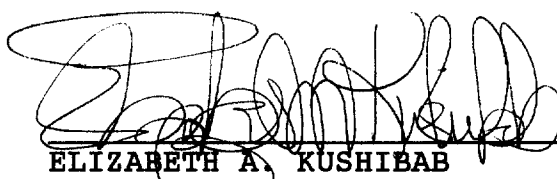
Furthermore, the Arizona Commission urges the FCC not to pre-judge the issue of regulatory oversight for Arizona or any other state that files a petition to retain jurisdiction over cellular service. Unfortunately, there is a perception among the states that the FCC's process has been tainted with a strong undercurrent of bias and predetermination in favor of preemption. This is evidenced in the unattainable hurdles imposed by the FCC in the form of the "evidence" that it requires to support a petition to continue regulation.

The FCC's evidentiary requirements go well beyond the intent of the underlying federal enactment by imposing unreasonable criteria and standards for the exemption. Moreover, this perception is a widely shared one, not limited to the states. A letter recently delivered to the Chairman of the Arizona Commission from S. Mark Tuller, Vice President, General Counsel and Secretary for Bell Atlantic Mobile Systems, Inc., demonstrates that that same

perception exists on the industry side as well. In his letter dated August 8, 1994, Mr. Tuller urges the Arizona Corporation Commission to reconsider filing this Petition. Referring to the burden of proof to be borne by Arizona, he states that the FCC's "criteria require extensive factual proofs and economic analyses that we believe cannot be made by this Commission." Incredibly, these comments were made by Mr. Tuller without any knowledge as to what would be contained in the Arizona Commission's Petition. The ACC can only conclude that Mr. Tuller can make such comments because he recognizes preemption to be a foregone conclusion.

The Arizona Commission urges the FCC to grant this Petition to retain entry and rate regulation over CMRS providers. The ACC believes that it has reasonably supported its Petition, and has provided the FCC with a sufficient basis to grant the exemption provided for by law.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Elizabeth A. Kushibab", written over a horizontal line.

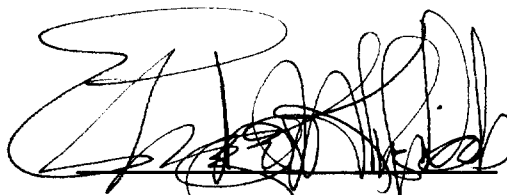
ELIZABETH A. KUSHIBAB  
Attorney  
Arizona Corporation Commission

1200 West Washington  
Phoenix, Arizona 85007  
(602) 542-3402

Dated: August 8, 1994

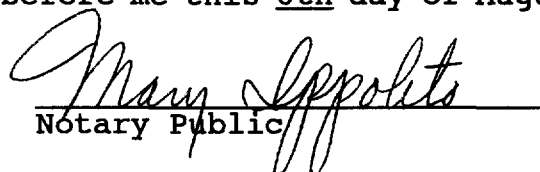
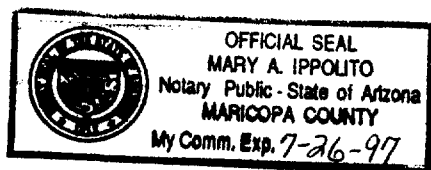
**VERIFICATION BY ATTORNEY**

I, Elizabeth A. Kushibab, being duly sworn, on oath state that I am an attorney for the Arizona Corporation Commission, and that the Commission is the duly authorized agency of the State of Arizona responsible for the regulation of all telecommunication services within the state. Further, I do state that the information in the foregoing Petition is true and correct to the best of my knowledge, information, and belief.



Elizabeth A. Kushibab  
Attorney  
Arizona Corporation Commission

Subscribed and sworn to before me this 8th day of August,  
1994.

  
Notary Public

\_\_\_\_\_  
(Seal and Expiration Date)



## **APPENDIX #1**